

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ELENA DEL CAMPO, ET AL.,

Plaintiffs,

v.

AMERICAN CORRECTIVE
COUNSELING SERVICES, INC., ET AL.,

Defendants.

Case No.: C 01-21151 JW (PVT)

**ORDER GRANTING PLAINTIFFS' MOTION
TO CHALLENGE THE DESIGNATION OF
CERTAIN DOCUMENTS; ORDER DENYING
PLAINTIFFS' MOTION TO MODIFY THE
STIPULATED PROTECTIVE ORDER; AND
ORDER DENYING PLAINTIFFS' MOTION
FOR SANCTIONS**

[Docket Nos. 597, 599]

I. INTRODUCTION

Originally, plaintiffs Elena del Campo, Ashorina Medina and Lisa Johnston moved to challenge the confidentiality designations made by defendant American Corrective Counseling Services, Inc. to ten exhibits attached to the deposition transcript of Brett Stohlton. (collectively "plaintiffs"). ("ACCS"). Mr. Stohlton is the chief operating officer of ACCS and testified regarding the company's document retention policies. Additionally, plaintiffs moved to modify the stipulated protective order entered by this court on January 3, 2007. ("January 3, 2007 Stipulated Protective Order"). (Docket No. 290). Prior to the scheduled hearing, defendant ACCS withdrew confidentiality designations for all but two of the exhibits. Defendant contends that the remaining exhibits (which consist of two documents) are protected as trade secrets. Defendant opposes any

1 modification of the stipulated protective order. On July 29, 2008, the parties appeared for hearing.
2 Having reviewed the papers and considered the arguments of counsel, plaintiffs' motion to challenge
3 the designation of certain documents is granted and plaintiffs' motion to modify the stipulated
4 protective order is denied.¹ Also, plaintiffs' motion for sanctions is denied.²

5 **II. BACKGROUND**

6 In or around December 2001, plaintiffs filed this class action lawsuit against defendant
7 ACCS and certain officers of the company alleging, *inter alia*, that defendants had operated a bad
8 check restitution program with the Santa Clara County District Attorney's Office which violated the
9 Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.*

10 In an effort to obtain various documents related to the operation of the bad check restitution
11 program administered by ACCS, plaintiffs submitted public records requests to various district
12 attorneys' offices in or around 2002. (Arons Decl. at 4.). On May 9, 2008, plaintiffs attached ten of
13 these documents as exhibits to the deposition of Brett Stohlton. (*Id.* at 2.). During the course of the
14 deposition, defendants designated all ten of the exhibits as confidential pursuant to the January 3,
15 2007 Stipulated Protective Order. (*Id.* at 3.). On June 25, 2008, plaintiffs moved to challenge the
16 confidentiality designations and also moved to modify the terms of the January 7, 2007 Stipulated
17 Protective Order. Defendants later withdrew the confidentiality designation as to all but two of the
18 exhibits attached to the Stohlton deposition. Specifically, the two exhibits are identified as Exhibits
19 1 and 2 and consist of Monthly Activity Reports obtained from the Monterey County District
20 Attorney's Office. Exhibit 1 is a monthly report for June 2005, and Exhibit 2 is a monthly report
21 for July 2004. Plaintiffs obtained both exhibits through a public records request. Each of the reports
22 contains customer names, graphs showing account activity, canceled checks, account and tracking
23 numbers, and check referral information.

24 Plaintiffs argue that the Monthly Activity Reports were obtained through public agencies,
25 making them public documents. In support of their argument, plaintiffs have filed a number of

26 ¹ The holding of this court is limited to the facts and particular circumstances underlying
27 the present motion.

28 ² Pursuant to an order dated July 24, 2008, plaintiffs' motion for sanctions was taken under
submission. ("July 24, 2008 Order"). (Docket No. 636).

1 similar reports that they have obtained through other public records requests. Defendants have
2 objected to the submission of the other monthly reports on the grounds that the filing was untimely,
3 and that the other documents are not relevant to the current dispute. Defendants also oppose
4 modification of the January 3, 2007 Stipulated Protective Order on the grounds that plaintiffs have
5 failed to meet and confer prior to filing their motion.

6 **III. DISCUSSION**

7 A. Exhibits 1 and 2

8 As an initial matter, plaintiffs obtained Exhibits 1 and 2 through their own independent
9 efforts. The exhibits were not obtained during the course of discovery. Instead, plaintiffs procured
10 Exhibits 1 and 2 through a public records request submitted to the Monterey County District
11 Attorney's Office. Beginning in 2002, plaintiffs used this investigatory practice throughout the
12 litigation (and in other litigation throughout the country), securing over 250 similar reports from
13 various District Attorney offices located in Florida, California, and Illinois. Because the monthly
14 reports are available to the public, plaintiffs contend that confidentiality designations are not
15 warranted here.

16 Defendant argues that each exhibit is a trade secret and should be designated as
17 "Confidential" even if the Monterey County District Attorney's Office produced them pursuant to a
18 public records request. Exhibit 1 was generated in June 2005 and Exhibit 2 was generated in July
19 2004. (collectively "Monterey Reports."). The Monterey Reports contain "specific financial and
20 performance metrics about bad check restitution programs administered by ACCS" and include
21 information such as "the volume of business that ACCS conducts with its district attorney client on a
22 monthly basis, the revenues generated by ACCS for the client, the identities of victims that sent
23 checks to the bad check restitution program, and a description of ACCS's strategy on an ongoing
24 basis." Defendant argues that disclosure of the reports would compromise its competitive advantage
25 and cause irreparable harm. For example, a competitor could use information obtained from the
26 reports "to direct [] sales efforts to victims that showed favorable metrics, e.g., where the number of
27 bad checks submitted by a particular victim was increasing." Moreover, defendant notes that
28 governing contracts between ACCS and the Monterey County District Attorney's Office contain

1 confidentiality provisions which are applicable to the Monterey Reports. Finally, defendant
2 contends that it was unaware that plaintiffs had obtained the Monterey Reports through public
3 records requests until Mr. Stohlton's deposition was held on May 9, 2008.

4 Rule 26(c) provides that "[t]he court may, for good cause, issue an order to protect a party or
5 person from annoyance, embarrassment, oppression, or undue burden or expense," based on an
6 enumerated, but not exhaustive, list of reasons. FED. R. CIV. P. 26(c). At issue is section (G), which
7 allows a court to "requir[e] that a trade secret or other confidential research, development, or
8 commercial information not be revealed or be revealed only in a specified way." (*Id.*)

9 "The owner of a trade secret has the privilege to refuse to disclose the secret, and to prevent
10 another from disclosing it." *Upjohn Co., v. Hygenia Biological Lab.*, 151 F.R.D. 355, 358 (E.D.
11 Cal. 1993) (citing Cal. Evid. Code § 1060). The party asserting the trade secret privilege must show
12 that the information sought is a trade secret, and that disclosure of the secret might be harmful. (*Id.*)
13 "A party asserting good cause bears the burden, for each particular document it seeks to protect, of
14 showing that specific prejudice or harm will result if no protective order is granted." *Foltz v. State*
15 *Farm Mut. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003) (internal citations omitted). Indeed,
16 "broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not
17 satisfy the Rule 26(c) test." *Id.* "The courts have not given trade secrets automatic and complete
18 immunity against disclosure, but have in each case weighed their claim to privacy against the need
19 for disclosure. Frequently, they have been afforded a limited protection." *Upjohn Co.*, 151 F.R.D.
20 at 358.

21 Defendant's reliance on *Masonite Corp. v. County of Mendocino Air Quality Managment*
22 *Dist.*, 42 Cal. App. 4th 436 (1996) is misplaced. Setting aside for a moment that *Masonite* is not
23 binding upon this court, a plaintiff corporation there sought to enjoin a public agency from
24 continuing to disclose a trade secret through public report to an environmental group. Pursuant to a
25 state health and safety code regulation, plaintiff corporation was required to file certain emissions
26 data with the local air quality management district. Plaintiff corporation had asked the district to
27 maintain the confidentiality of the trade secrets provided in its filings. Upon learning that an
28 environmental group was seeking uncensored versions of its filings, plaintiff corporation sought a

1 temporary restraining order and later a preliminary injunction. In sum, the trial court denied the
 2 preliminary injunction. The Court of Appeal reversed the trial court which had denied “plaintiff
 3 [corporation’s] motion for preliminary injunction to prevent disclosure of ‘emission factors’ and the
 4 information inadvertently disclosed by public agencies.” (*Id.*). Specifically, the court noted that
 5 “‘data used to calculate emission data are not emission data’” and if classified as trade secrets, “must
 6 be protected.” (*Id.*). Additionally, the Court of Appeal found that inadvertent disclosure by public
 7 agencies to environmental groups did not constitute a waiver by plaintiff corporation. It stated that
 8 “[v]oluntary disclosure of information as a public record, even if mistaken, constitutes a valid
 9 waiver of trade secret protection.” (*Id.* at 455.).

10 Here, defendant ACCS has not shown that the information contained in the Monterey
 11 Reports constitutes trade secrets. Additionally, defendant ACCS has not shown any specific
 12 prejudice or harm that will result if no protective order is granted. Instead, defendant ACCS has
 13 broadly alleged that certain of its competitors may employ the information contained in the
 14 Monterey Reports to gain a business advantage with victims of bad checks. For example, defendant
 15 proffers no explanation whatsoever for the specific harm or prejudice that results from reports at
 16 least 3-4 years old. Defendant also has not shown any efforts it has taken to enforce the
 17 confidentiality provisions in the governing contracts to avoid further harm (even in the four months
 18 since it discovered that the reports were being produced pursuant to public records requests).
 19 Defendant merely states that “ACCS has endeavored to keep its monthly reports to district attorneys
 20 strictly confidential.” (Stohlton Decl., ¶ 11.). Finally, neither of the Monterey Reports produced
 21 under seal has been stamped “Proprietary and Confidential” as is customary with ACCS policy.³
 22 (Stohlton Decl., ¶ 16.). Accordingly, plaintiffs’ motion to challenge the confidentiality designations
 23 of Exhibits 1 and 2 is granted. Specific financial information, including bank account and routing
 24 information located on the bank check, may be redacted on page 3 of Exhibit 2.

25 B. Modification of Stipulated Protective Order

26 Plaintiffs have proposed modifying the January 3, 2007 Stipulated Protective Order in a
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28 ³ In connection with the motion to dispute the confidentiality designations of Exhibits 1
 and 2 to Brett Stohlton’s deposition, plaintiffs have lodged the two exhibits with the court.

1 manner that would shift the filing burden to the party seeking to maintain confidentiality of certain
2 documents. Plaintiffs suggest their proposal would cause the designating party to scrutinize at the
3 outset whether a particular documents warrants protection. Defendant first argues that plaintiffs
4 failed to meet and confer regarding their motion to modify the protective order. Section 6.2 of the
5 Protective Order requires the parties to meet and confer before modifying the order. Defendant next
6 argues that plaintiffs' burden shifting proposal would likely inundate this court with many more
7 motions and cause a waste of judicial resources. Having reviewed the papers and considered the
8 arguments of counsel, plaintiffs' motion to modify the Stipulated Protective Order is denied.

9 C. Sanctions

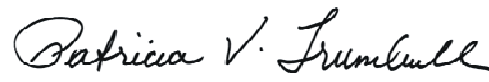
10 Pursuant to Rule 37(b)(2), plaintiffs have moved for sanctions as a result of defendant
11 ACCS's improper and unjustifiable designation of certain documents as discussed above. Plaintiffs
12 argue that the designations were "clearly unjustified" especially in light of how the documents were
13 obtained and given their availability to the public. Defendant complains that plaintiffs have failed to
14 meet and confer as required by the protective order and the local rules in this district. Moreover,
15 defendant ACCS's original designation of ten exhibits was later reduced to two exhibits during
16 plaintiffs' described "case development process." Additionally, plaintiffs' motives in seeking to
17 challenge the designation of certain exhibits identified above is related to lobbying efforts in the
18 California legislature rather than anything to do with the merits of the above-captioned action.
19 Having reviewed the papers and considered the arguments of counsel, plaintiffs' motion for
20 sanctions is denied.

21 **IV. CONCLUSION**

22 For the foregoing reasons, plaintiffs' motion to challenge the designation of Exhibits 1 and 2
23 is granted and plaintiffs' motions to modify the January 3, 2007 Stipulated Protective Order is
24 denied. Additionally, plaintiffs' motion for sanctions is denied.

25 IT IS SO ORDERED.

26 Date: *September 8, 2008*


27 PATRICIA V. TRUMBULL
28 United States Magistrate Judge

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